

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court Northern District of California on the following ☒ Patents or ☒ Trademarks:

DOCKET NO.	DATE FILED 4/13/2011	U.S. DISTRICT COURT Northern District of California
PLAINTIFF Facebook, Inc.		DEFENDANT Various, Inc.; GMCI Internet Operations, Inc.; Traffic Cat, Inc.; Friendfinder Networks Inc.; and Does 1-100
E-filing EV 11 1805 MEJ		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 2,937,798	4/5/2005	Various, Inc. (f/k/a Friendfinder, Inc.)
2 2,962,192	6/14/2005	Various, Inc. (f/k/a Friendfinder, Inc.)
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In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY		
	<input checked="" type="checkbox"/> Amendment	<input checked="" type="checkbox"/> Answer	<input checked="" type="checkbox"/> Cross Bill <input checked="" type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK RICHARD W. WIEKING	(BY) DEPUTY CLERK GLORIA ACEVEDO	DATE 4-14-11
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

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15 FACEBOOK, INC.

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA

MEJ

18 FACEBOOK, INC.,

19 Plaintiff,

20 v.

21 VARIOUS, INC.; GMCI INTERNET
22 OPERATIONS, INC.; TRAFFIC CAT, INC.;
23 FRIENDFINDER NETWORKS INC.; and
24 DOES 1-100,

25 Defendants.

CV 11

1805

COMPLAINT SEEKING DAMAGES
AND INJUNCTIVE RELIEF FOR:

- (1) Federal Trademark Dilution,
15 U.S.C. § 1125;
- (2) Contributory and Vicarious Trademark
Dilution under 15 U.S.C. § 1125
- (3) Trademark Dilution Under Cal. Bus. &
Prof. Code § 14247;
- (4) False Designation of Origin,
15 U.S.C. § 1125;
- (5) Federal Trademark Infringement
(FACEBOOK), 15 U.S.C. § 1114;
- (6) Common Law Trademark
Infringement;
- (7) Contributory and Vicarious Trademark
Infringement;
- (8) Violation of the Anti-Cybersquatting
Consumer Protection Act, 15 U.S.C. §
1125(d);
- (9) Contributory and Vicarious Violation of
the Anti-Cybersquatting Consumer
Protection Act, 15 U.S.C. § 1125(d);
- (10) Unfair Competition, Cal. Bus. & Prof.
Code §§ 17200, *et seq.*; and
- (11) Declaratory Relief.

JURY TRIAL DEMANDED

1. Plaintiff Facebook, Inc. ("Facebook") brings this suit to enjoin Defendants' ongoing infringement of the famous FACEBOOK trademark to promote an online "adult" networking service and affiliate program under the brand FACE BOOK OF SEX. Defendants' mark, websites and affiliate program are a deliberate and blatant attempt to imitate and trade upon the success of the Facebook brand. Association with Defendants' pornographic websites tarnishes Facebook's reputation and abuses the trust of Facebook users. Accordingly, Facebook brings this suit to put a stop to Defendants' unlawful scheme.

PARTIES

2. Facebook is a Delaware corporation having its principal place of business at 1601 South California Avenue, Palo Alto, California 94304.

3. Facebook is informed and believes, and based thereon alleges, that Defendant Various, Inc. ("Various") is a California corporation having its principal place of business at 220 Humboldt Court, Sunnyvale, California, 94304 and that it is a subsidiary of Defendant Friendfinder Networks Inc.

4. Facebook is informed and believes, and based thereon alleges, that Defendant GMCI Internet Operations, Inc. is a New York corporation having its principal place of business at 11 Penn Plaza, 12th Floor, New York, New York 20001, and that it is a subsidiary of Defendant Friendfinder Networks Inc.

5. Facebook is informed and believes, and based thereon alleges, that Defendant Traffic Cat, Inc. is a California corporation having its principal place of business at 220 Humboldt Court, Sunnyvale, California, 94304 and that it is a subsidiary of Defendant Friendfinder Networks Inc.

6. Facebook is informed and believes, and based thereon alleges, that Defendant Friendfinder Networks Inc. is a Nevada corporation having its principal place of business at 6800 Broken Sound Parkway, Suite 200, Boca Raton, Florida, 33487, and that it is the parent company of Defendants Various Inc., GMCI Internet Operations, Inc., and Traffic Cat, Inc.

7. Defendants Various Inc., GMCI Internet Operations, Inc., Traffic Cat, Inc., and Friendfinder Networks Inc. are referred to collectively herein as "Defendants" or "Named

Defendants.”

8. Defendants collectively operate numerous online adult networking sites, including facebookofsex.com, and affiliate programs that drive traffic to those sites.

9. Facebook is informed and believes, and based thereon alleges, that Does 1 through 100 are members of an affiliate network operated by Various Inc., GMCI Internet Operations, Inc., Traffic Cat, Inc. and/or Friendfinder Networks Inc., and are the owners, operators, or beneficiaries of websites that utilize domain names, advertisements, or other materials that infringe and dilute Facebook’s trademark rights through use of the FACE BOOK OF SEX mark. The true identities of Defendants Does 1 through 100 are not currently known to Facebook, but Facebook anticipates that the true identities of Does 1 through 100 will be ascertained by way of expedited discovery propounded to the named defendants. Facebook will amend its complaint to name those parties once that information is discovered. Does 1 through 100 are referred to herein as “Doe Defendants” or “Doe Defendant Affiliates.”

JURISDICTION AND VENUE

10. This Court has jurisdiction of this action under 15 U.S.C. §§ 1119 and 1121 and 28 U.S.C. §§ 1331, 1338, and 1367. This action is filed under the United States Trademark Act of July 5, 1946, as amended, 15 U.S.C. § 1501, *et seq.* (the “Lanham Act”).

11. This Complaint also seeks declaratory relief under the Declaratory Judgment Act, 28 U.S.C. § 2201, 2202. This Court has jurisdiction over the subject matter of the declaratory relief claim asserted herein pursuant to 28 U.S.C. §§ 1331 and 1338 and 15 U.S.C. § 1051, *et seq.*

12. This Court has personal jurisdiction over Defendants in that Defendants’ willful actions herein alleged took place in and/or caused tortious injury to Facebook in this jurisdiction.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391, as this is a judicial District in which a substantial part of the events giving rise to the claims occurred.

INTRA-DISTRICT ASSIGNMENT

14. This is an Intellectual Property Action within the meaning of Civil Local Rule 3-2(c), and is to be assigned on a District-wide basis accordingly.

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COMMON ALLEGATIONS

FACEBOOK'S BUSINESS

15. Facebook began offering its services in 2004. Since that time, Facebook has become one of the most widely recognized brands in the United States. As of early 2011, Facebook provided online networking services in over 70 languages to over 500 million active users worldwide, more than half of whom typically logged on to the Facebook website on any given day. Facebook users share over 30 billion pieces of content (web links, news stories, blog posts, notes, photo albums, etc.) each month and can interact with 900 million objects (individual profiles, pages, groups, and events). Facebook users spend more than 700 billion minutes per month on facebook.com, making the site the second most trafficked website in the United States and worldwide.

16. Facebook also offers the "Facebook Platform," which allows third parties to use Facebook services on their websites to make those third party websites more social and engaging. To date, more than 2.5 million websites use the Facebook Platform and more than 250 million people engage with Facebook through independent third party websites each month. Since April 2010, an average of 10,000 new websites per day have begun to use features made available through the Facebook Platform, and currently over 80 of the comScore U.S. top 100 websites integrate Facebook features into their independent websites. These third party websites substantially increase the visibility of Facebook and its marks.

17. Facebook is ubiquitous on the web and Facebook users are accustomed to seeing and using Facebook and its products and services across the web, not just on facebook.com. Facebook, and its FACEBOOK trademark, are recognized and renowned in the U.S. and internationally.

FACEBOOK'S FAMOUS TRADEMARK

18. Since its online networking service was launched in February 2004, Facebook has continuously used the mark FACEBOOK in interstate commerce in the United States in connection with its goods and services. The FACEBOOK mark is highly distinctive with regard to online social networking services.

1 19. Facebook owns multiple U.S. registrations for the mark FACEBOOK. These
2 registrations cover a wide variety of goods and services, including, but not limited to:

- 3 • Online networking services; online chat functions for transmission of messages,
4 photographs, videos, and other user-defined content; and online forums;
- 5 • Hosting customized web pages featuring user-defined information and personal
6 profiles;
- 7 • Online journals featuring user-defined content and electronic publishing services;
8 and
- 9 • Software to enable uploading, tagging, and sharing of photographs, videos, and
10 other user-defined content or information.

11 True and correct copies of registrations for the FACEBOOK mark are attached hereto as Exhibit
12 A, and are incorporated by reference as though fully set forth herein.

13 20. In addition, Facebook has common law rights in the FACEBOOK mark and marks
14 that incorporate FACEBOOK in connection with various other goods and services, including as
15 identified in pending U.S. trademark applications. True and correct copies of the U.S. Patent and
16 Trademark Office online status pages for Facebook's pending trademark applications for its
17 FACEBOOK and FACEBOOK-formative marks are attached hereto as Exhibit B, and are
18 incorporated by reference as though fully set forth herein. All of Facebook's marks that consist
19 of or incorporate the term FACEBOOK are referred to herein as the "FACEBOOK Marks."

20 21. Facebook has been the subject of thousands of unsolicited stories in television,
21 radio, and print media, highlighting Facebook's innovative and successful efforts in online
22 networking. A fictional version of Facebook's founding was depicted in the Academy Award
23 winning film "The Social Network," which has grossed hundreds of millions at the box office
24 since its release in 2010. Facebook has also received numerous awards and recognitions,
25 including a listing in Nielsen's Top 10 Web Brands (ranking Facebook 2nd overall and 1st by
26 hours spent on the site per day) in January 2011; The Webby Award's "People's Voice Winner"
27 for Social Networking in 2007 and 2008; Harvard Business School's "Entrepreneurial Company
28 of the Year" in June 2008; *BusinessWeek's* "The World's 50 Most Innovative Companies" in

2008; Business Insider's "Most Likely to Change the World" award in 2009; and The Crunchie Award for Best Overall Startup in 2007, 2008 and 2009. And in 2010, *Time Magazine* named Facebook founder Mark Zuckerberg its Person of the Year.

22. As a result of the nature and quality of Facebook's services, its widespread use of the FACEBOOK Marks, extensive and continuous media coverage, the high degree of consumer recognition of the FACEBOOK Marks, Facebook's enormous and loyal user base, its numerous trademark registrations and pending applications, and other factors, the FACEBOOK Marks are famous within the meaning of Section 43(c) of the United States Trademark Act, 15 U.S.C. § 1125(c).

DEFENDANTS' FACE BOOK OF SEX NETWORK

23. Defendants operate an online adult networking website branded and promoted as "Face Book of Sex," and also operate an extensive "Face Book of Sex" affiliate network that uses infringing advertisements, domain names, and other materials to generate web traffic and revenue.

24. Defendants use the FACE BOOK OF SEX mark in connection with offering their pornographic adult networking websites facebookofsex.com, prominently displaying the FACE BOOK OF SEX mark on every page of the site.

25. The FACE BOOK OF SEX mark is a blatant attempt by Defendants to hijack Facebook's fame for illicit financial gain. Defendants' FACE BOOK OF SEX mark is highly similar to and incorporates the entirety of Facebook's FACEBOOK Marks, with only the minor addition of a single space inserted between the words "face" and "book" and the addition of the words "of sex" to merely describe the prurient nature of Defendants' services. Defendants create additional association and connection with Facebook by displaying "FACE BOOK" in one font color and "OF SEX" in another.

26. Apart from the pornographic content, Defendants offer services under the FACE BOOK OF SEX mark similar to many of the services provided by Facebook. Indeed, Defendants encourage their affiliates to "promote the sexy side of today's social networking phenomenon—facebookofsex.com." Like Facebook, Defendants provide online networking

1 services: users create profiles with photos and personal information; upload, share, and comment
2 on photos, videos, and other online content; update their status; and connect with other users with
3 similar interests. They can also conduct live chats. But unlike Facebook, Defendants permit and
4 indeed encourage the display and posting of pornographic content. Upon accessing the
5 Face Book of Sex site, a visitor immediately encounters highly graphic and sexually explicit
6 images and videos. True and correct copies of screenshots from the Face Book of Sex site
7 (altered to obscure personally identifying information and pornographic images) are attached
8 hereto as Exhibit C and are incorporated by reference as though fully set forth herein.

9 27. Indeed, much of the Face Book of Sex site appears designed to call Facebook to
10 mind. The "Activities" page presents status updates from a user and his or her friends in a
11 manner similar to Facebook's "News Feed." The site includes imitations of Facebook's "Like"
12 and "Comment" features for uploaded content. And a blue band featured across the top of each
13 page evokes the recognizable blue band found across the top of every Facebook page. See
14 Exhibit C at 14-17.

15 28. Defendants' use of the FACEBOOK OF SEX mark on their pornographic
16 networking site infringes, dilutes, and is likely to dilute the famous FACEBOOK Mark, and
17 tarnishes Facebook's reputation.

18 29. Defendants' Face Book of Sex site is just one part of their larger, calculated
19 scheme to misappropriate the FACEBOOK Marks for their own financial gain. Defendants also
20 operate a widespread infringing affiliate network that pays third party website operators (the Doe
21 Defendants) to direct traffic to Defendants' adult networking sites (including
22 facebookofsex.com), encouraging these sites to use materials that dilute and infringe the
23 FACEBOOK Marks.

24 30. Defendants' intent to capitalize on the fame of Facebook's Marks via their affiliate
25 network is clear. In their marketing material, Defendants solicit affiliates to promote the
26 Face Book of Sex site by encouraging affiliates to "be part of the crowd cashing in on" the "new
27 and exciting cobrand" Face Book of Sex, and emphasize that facebookofsex.com has a "highly
28 recognizable name." Attached as Exhibit D is Defendants' affiliate program newsletter (altered

to highlight the quotations cited herein), which is incorporated by reference as though fully set forth herein.

31. Defendants encourage and directly incentivize the Doe Defendant Affiliates to display the infringing and dilutive FACE BOOK OF SEX mark on their sites. Any party interested in generating revenue may set up an affiliate account with Defendants. They can then create their own "cobranded" site using Defendants' templates and content, which redirect users to Defendants' sites. Affiliates can also download infringing online advertisements for use on their sites. These ads prominently display the FACE BOOK OF SEX mark along with sexually explicit material. True and correct copies of a selection of Face Book of Sex ads (altered to obscure pornographic images) available for download by any party that wishes to become an affiliate are attached hereto as Exhibit E and incorporated by reference as if fully set forth herein. The affiliates are then compensated based on the number of users they lead to Defendants' websites, either via an infringing ad or via a "cobranded" Face Book of Sex site. Printouts of Defendants' webpages promoting its affiliate program (accessed by selecting the "Webmasters, Earn Money!" hyperlink included at the bottom of every page of the facebookofsex.com site) are attached hereto as Exhibit F and are incorporated by reference as though fully set forth herein.

32. The pornographic nature of Defendants' infringing banner ads ensures that the websites on which they appear will also be pornographic or at least adult oriented. The association of the FACEBOOK Marks with these affiliate sites further tarnishes Facebook's reputation.

33. Many of these Doe Defendant Affiliates have also registered or obtained domain names that incorporate the FACE BOOK OF SEX brand, resulting in hundreds of additional infringing domain names directing traffic to Defendants' sites. These include: facebookofsex.co.uk, facebooksex.de, facebokofsex.us, fbookofsex.com, facebookfosex.com, facebookofsex.biz, facebookofsex.ca, facebook-of-sex.com, facebookofsex.de, facebookofsex.es, blackfacebookofsex.com, facebokofsex.net, facebokofsex.us, and facebookofsexysingles.com, in addition to many other misspellings, derivatives, or abbreviations of the FACEBOOK Marks, or descriptive terms added to the FACEBOOK Marks (collectively the "Face Book of Sex Affiliate

Domains"). Each of these domain names forwards or "links" visitors to one of approximately twenty-nine adult networking sites owned and operated by Defendants, including the Face Book of Sex site.

34. Not only do Defendants encourage the creation of these infringing domain names and use of the infringing banner ads by the Doe Defendants, but they also directly benefit by using the Face Book of Sex Affiliate Domains to promote and drive traffic to their adult networking sites, including the Face Book of Sex site.

35. Defendants are actively and deliberately attempting to co-opt the FACEBOOK Marks for their own financial gain. The FACE BOOK OF SEX mark, the design and operation of the Face Book of Sex site, and the active incentivizing and exploitation of infringing affiliate domain names, cobranded sites, and banner advertisements evidence a sophisticated and methodical scheme to associate Facebook's marks, services, and fame with Defendants' adult networking sites. Until Defendants are enjoined, damage to Facebook's reputation and business will continue.

36. Facebook has demanded that Defendants cease violating its trademark rights. Defendants, however, continue to exploit the FACE BOOK OF SEX mark for their own profit and to Facebook's detriment despite Facebook's express objection thereto.

FACEBOOK'S USE OF "FRIEND FINDER"

37. Facebook uses the words "friend finder" to refer to and describe a tool on its website that allows users to find friends by searching their email contact lists.

38. In response to Facebook's demands that Defendants cease their infringement and dilution of the FACEBOOK Marks, Defendants raised concerns regarding Facebook's use of the words "friend finder" in light of Various's purported rights in the term "FriendFinder." Defendants have tried to use the purported "FriendFinder" mark as leverage in negotiations, asserting that Facebook must address Defendants' concerns before they will address Facebook's trademark claims. True and correct copies of emails from Defendants' in-house counsel relating this point (highlighting the relevant content) are attached hereto as Exhibits G and H and incorporated by reference as if fully set forth herein.

39. Various claims exclusive rights in "FriendFinder" based on its use of the term in connection with a variety of adult-themed social networking web sites that help users find friends. Various owns the following U.S. trademark registrations for "FriendFinder" in connection with dating services and related online services:

- Registration No. 2,962,192 for “FriendFinder” in Classes 38 and 45; and
- Registration No. 2,937,798 for “AdultFriendFinder” in Classes 38, 41, and 45.

True and correct copies of the registration certificates for these marks are attached hereto as Exhibit I and incorporated by reference as though fully set forth herein. These registrations are referred to collectively herein as the “‘FriendFinder’ Registrations.”

40. Facebook's use of "friend finder" amounts to descriptive fair use and does not infringe Various's purported trademark rights in the "FriendFinder" term. Despite having communicated this fact to Defendants, Defendants continue to assert that Facebook must address the use of the words "friend finder" in conjunction with Facebook's allegations that Defendants are infringing the FACEBOOK Marks.

**FIRST CAUSE OF ACTION
(FEDERAL TRADEMARK DILUTION)**

41. Facebook incorporates by reference paragraphs 1 through 40, inclusive, as if fully set forth herein.

42. As a result of the enormous publicity afforded the FACEBOOK Marks and Facebook's strong and loyal user base, the FACEBOOK Marks are widely recognized by the general public of the United States as a designation of Facebook's services, and are famous.

43. The FACEBOOK Marks became famous before Defendants and Doe Defendants adopted and began using the FACE BOOK OF SEX mark.

44. Defendants' and Doe Defendants' use of the FACE BOOK OF SEX mark is likely to cause an association with Facebook arising from the similarity between the FACE BOOK OF SEX mark and the FACEBOOK Marks that impairs the distinctiveness of the FACEBOOK Marks and weakens the connection in the public's mind between the FACEBOOK Marks and Facebook's services. The FACE BOOK OF SEX mark is likely to cause dilution by blurring

1 based on a number of relevant considerations, including:

2 (a) The FACE BOOK OF SEX mark is nearly identical to the FACEBOOK
3 Marks in that it combines the FACEBOOK mark with a descriptive reference to the prurient
4 nature of Defendants' and Doe Defendants' services;

5 (b) The FACEBOOK Marks are inherently distinctive;

6 (c) Facebook has substantially and exclusively used the FACEBOOK Marks
7 in connection with social networking services;

8 (d) The FACEBOOK Marks are widely recognized by the general consuming
9 public; and

10 (e) Defendants and Doe Defendants intend to create an association with the
11 FACEBOOK Marks.

12 45. Moreover, Defendants' and Doe Defendants' use of the similar FACE BOOK OF
13 SEX mark in connection with a pornographic web site creates an association with Facebook that
14 harms and tarnishes Facebook's reputation.

15 46. Defendants' and Doe Defendants' acts alleged above have caused, and if not
16 enjoined will continue to cause irreparable and continuing harm to Facebook's marks, business,
17 reputation, and goodwill. Facebook has no adequate remedy at law as monetary damages are
18 inadequate to compensate Facebook for the injuries caused by Defendants and Doe Defendants.

19 47. As a result of Defendants' and Doe Defendants' acts as alleged above, Facebook
20 has incurred damages in an amount to be proven at trial.

21 48. Defendants' and Doe Defendants' wrongful use of the FACE BOOK OF SEX
22 mark is deliberate, willful, and without any extenuating circumstances, and constitutes a willful
23 intent to trade on Facebook's reputation or to cause dilution of the famous FACEBOOK Marks
24 and an exceptional case within the meaning of Lanham Act section 35, 15 U.S.C. § 1117.
25 Facebook is therefore entitled to recover three times the amount of its actual damages, its
26 attorneys' fees and costs incurred in this action, and prejudgment interest.

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**SECOND CAUSE OF ACTION
(CONTRIBUTORY AND VICARIOUS TRADEMARK DILUTION)
(AS TO NAMED DEFENDANTS ONLY)**

49. Facebook incorporates by reference paragraphs 1 through 40, inclusive, as if fully set forth herein.

50. In connection with Defendants' affiliate program, Defendants have knowingly or recklessly induced or encouraged their affiliates to use in commerce and without Facebook's authorization or consent the FACE BOOK OF SEX mark on the affiliates' websites and in banner ads that drive traffic to Defendants' sites.

51. Similarly, through their affiliate program Defendants have knowingly or recklessly induced or encouraged their affiliates to use and register or obtain the Face Book of Sex Affiliate Domains using the FACE BOOK OF SEX mark and other similar marks.

52. These acts by Defendants' affiliates are likely to cause an association with Facebook arising from the similarity between the FACE BOOK OF SEX mark and the FACEBOOK Marks that impairs the distinctiveness of the FACEBOOK Marks, weakens the connection in the public's mind between the FACEBOOK Marks and Facebook's services, and harms and tarnishes Facebook's reputation, in violation of 15 U.S.C. § 1125(c).

53. Defendants have benefited financially from the dilutive acts of the affiliates they induce and enable through their affiliate program. Defendants have the right and ability to control the dilution occurring on their affiliate network.

54. Furthermore, Defendants are contributing to the ongoing dilution of the FACEBOOK Marks by affiliates whom Defendants know or have reason to know are diluting the FACEBOOK Marks. Defendants nonetheless continue to provide services and consideration to these infringing affiliates.

55. Defendants' acts alleged above have caused, and if not enjoined will continue to cause irreparable and continuing harm to Facebook's marks, business, reputation, and goodwill. Facebook has no adequate remedy at law as monetary damages are inadequate to compensate Facebook for the injuries caused by Defendants.

56. As a result of Defendants' acts as alleged above, Facebook has incurred damages

1 in an amount to be proven at trial.

2 57. Defendants' wrongful use of the FACE BOOK OF SEX mark is deliberate,
3 willful, and without any extenuating circumstances, and constitutes a willful intent to trade on
4 Facebook's reputation or to cause dilution of the famous FACEBOOK Marks and an exceptional
5 case within the meaning of Lanham Act section 35, 15 U.S.C. § 1117. Facebook is therefore
6 entitled to recover three times the amount of its actual damages, its attorneys' fees and costs
7 incurred in this action, and prejudgment interest.

8 **THIRD CAUSE OF ACTION**
9 **(TRADEMARK DILUTION UNDER CAL. BUS. & PROF. CODE § 14247)**

10 58. Facebook incorporates by reference paragraphs 1 through 40, inclusive, as if fully
11 set forth herein.

12 59. The FACEBOOK Marks are distinctive and famous within the meaning of section
13 14247 of the California Business and Professions Code.

14 60. Defendants' and Doe Defendants' use of the FACE BOOK OF SEX mark began
15 after the FACEBOOK Marks became famous.

16 61. Defendants' and Doe Defendants' continued use of the FACE BOOK OF SEX
17 mark is likely to cause injury to Facebook's business reputation and/or the dilution of the
18 distinctive quality of Facebook's famous FACEBOOK Marks, in violation of California Business
19 and Professions Code § 14247.

20 62. Defendants' and Doe Defendants' acts alleged above have caused, and if not
21 enjoined will continue to cause irreparable and continuing harm to Facebook's marks, business,
22 reputation, and goodwill. Facebook has no adequate remedy at law as monetary damages are
23 inadequate to compensate Facebook for the injuries caused by Defendants and Doe Defendants.

24 63. As a result of Defendants' and Doe Defendants' acts as alleged above, Facebook
25 has incurred damages in an amount to be proven at trial.

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**FOURTH CAUSE OF ACTION
(FEDERAL FALSE DESIGNATION OF ORIGIN)**

64. Facebook incorporates by reference paragraphs 1 through 40, inclusive, as if fully set forth herein.

65. In connection with Defendants' and Doe Defendants' services, Defendants and Doe Defendants have used in commerce and without Facebook's authorization or consent the FACE BOOK OF SEX mark, which is very similar to the registered and common law FACEBOOK Marks.

66. Such acts are likely to cause confusion and deception among the public and/or are likely to lead the public to believe that Facebook has authorized, approved, or somehow sponsored Defendants' and Doe Defendants' use of the FACE BOOK OF SEX mark in connection with their services.

67. The aforesaid wrongful acts of Defendants and Doe Defendants constitute the use of a false designation of origin and false description or representation, all in violation of 15 U.S.C. § 1125(a).

68. Defendants' and Doe Defendants' acts alleged above have caused, and if not enjoined will continue to cause irreparable and continuing harm to Facebook's marks, business, reputation, and goodwill. Facebook has no adequate remedy at law as monetary damages are inadequate to compensate Facebook for the injuries caused by Defendants and Doe Defendants.

69. As a result of Defendants' and Doe Defendants' acts as alleged above, Facebook has incurred damages in an amount to be proven at trial.

70. Defendants' wrongful use of the FACE BOOK OF SEX mark is deliberate, willful, and without any extenuating circumstances, and constitutes a knowing use of Facebook's Marks and an exceptional case within the meaning of Lanham Act section 35, 15 U.S.C. § 1117. Facebook is therefore entitled to recover three times the amount of its actual damages, its attorneys' fees and costs incurred in this action, and prejudgment interest.

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**FIFTH CAUSE OF ACTION
(FEDERAL TRADEMARK INFRINGEMENT)**

71. Facebook incorporates by reference paragraphs 1 through 40, inclusive, as if fully set forth herein.

72. The FACEBOOK Marks are distinctive, widely recognized by the general public of the United States as a designation of Facebook's services, and famous.

73. The FACE BOOK OF SEX mark is very similar to the registered FACEBOOK Marks in appearance, sound, and commercial impression.

74. Although the user generated content of the sites differs as Facebook does not permit the posting of pornographic material, Defendants' and Doe Defendants' underlying services are the same as and/or related to many of Facebook's services.

75. Facebook, Defendants, and Doe Defendants offer their services through the same channel of trade, i.e., the internet.

76. Facebook is informed and believes, and based thereon alleges, that Defendants and Doe Defendants adopted the FACE BOOK OF SEX mark with knowledge of, and the intent to call to mind, create a likelihood of confusion with regard to, and/or trade off the fame of Facebook and the registered FACEBOOK Marks.

77. Facebook has given Defendants notice that they are violating its trademark rights. Defendants continue to use the FACE BOOK OF SEX mark despite Facebook's express objection thereto.

78. Defendants' and Doe Defendants' continued use of the FACE BOOK OF SEX mark has and will continue to injure Facebook by causing a likelihood that the public will be confused or mistaken into believing that the goods or services provided by Defendants are endorsed or sponsored by or associated with Facebook.

79. Facebook has no control over the nature and quality of the services offered by Defendants and Doe Defendants under the FACE BOOK OF SEX mark. Facebook's reputation, goodwill, and the value of Facebook's registered and common law marks have been and will continue to be damaged by Defendants' and Doe Defendants' continued use of the FACE BOOK

1 OF SEX name and mark. Because of the likelihood of confusion between the parties' marks, any
2 defects, faults, or deleterious aspects found within Defendants' and Doe Defendants' services
3 marketed under the FACE BOOK OF SEX mark will negatively reflect upon and injure the
4 reputation that Facebook has established for the services it offers in connection with the
5 registered FACEBOOK Marks. As such, Defendants and Doe Defendants are liable to Facebook
6 for infringement of a registered mark under 15 U.S.C. §1114.

7 80. Defendants' and Doe Defendants' acts alleged above have caused, and if not
8 enjoined will continue to cause irreparable and continuing harm to Facebook's marks, business,
9 reputation, and goodwill. Facebook has no adequate remedy at law as monetary damages are
10 inadequate to compensate Facebook for the injuries caused by Defendants and Doe Defendants.

11 81. As a result of Defendants' and Doe Defendants' acts as alleged above, Facebook
12 has incurred damages in an amount to be proven at trial.

13 82. Defendants' and Doe Defendants' wrongful use of the FACE BOOK OF SEX
14 mark is deliberate, willful, and without any extenuating circumstances, and constitutes a knowing
15 use of Facebook's Marks and an exceptional case within the meaning of Lanham Act section 35,
16 15 U.S.C. § 1117. Facebook is therefore entitled to recover three times the amount of its actual
17 damages, its attorneys' fees and costs incurred in this action, and prejudgment interest.

18 **SIXTH CAUSE OF ACTION**
19 **(COMMON LAW TRADEMARK INFRINGEMENT)**

20 83. Facebook incorporates by reference paragraphs 1 through 40, inclusive, as if fully
21 set forth herein.

22 84. Defendants' and Doe Defendants' acts alleged herein and specifically, without
23 limitation, their use of the FACE BOOK OF SEX mark, infringe Facebook's exclusive trademark
24 rights in the FACEBOOK Marks, in violation of the common law.

25 85. Defendants' and Doe Defendants' acts alleged above have caused, and if not
26 enjoined will continue to cause irreparable and continuing harm to Facebook's marks, business,
27 reputation, and goodwill. Facebook has no adequate remedy at law as monetary damages are
28 inadequate to compensate Facebook for the injuries caused by Defendants and Doe Defendants.

1 86. As a result of Defendants' and Doe Defendants' acts as alleged above, Facebook
2 has incurred damages in an amount to be proven at trial.

3 87. Defendants' and Doe Defendants' wrongful use of the FACE BOOK OF SEX
4 mark is deliberate, willful, and in reckless disregard of Facebook's trademark rights, entitling
5 Facebook to the recovery of punitive damages.

6 **SEVENTH CAUSE OF ACTION**
7 **(CONTRIBUTORY AND VICARIOUS TRADEMARK INFRINGEMENT)**
8 **(AS TO NAMED DEFENDANTS ONLY)**

9 88. Facebook incorporates by reference paragraphs 1 through 40, inclusive, as if fully
10 set forth herein.

11 89. Members of Defendants' affiliate program have infringed and are infringing the
12 FACEBOOK Marks in violation of California and federal law through use of the FACE BOOK
13 OF SEX mark and the Face Book of Sex Affiliate Domains.

14 90. Defendants intentionally induce their affiliates to infringe Facebook's mark
15 through the Face Book of Sex affiliate program.

16 91. On information and belief, Defendants know or have reason to know that their
17 affiliates are engaged in acts that constitute infringement of the FACEBOOK Marks. Despite
18 this, Defendants provide services and consideration to the infringing affiliates through their
19 comprehensive affiliate program.

20 92. Defendants are thus contributing to the ongoing infringement of the FACEBOOK
21 Marks by affiliates whom Defendants know or have reason to know are infringing the
22 FACEBOOK Marks.

23 93. Defendants have benefitted financially from the affiliates' infringing acts they
24 induce or enable through their affiliate program. Defendants have the right and ability to control
25 the infringement occurring on their affiliate network.

26 94. Defendants' acts alleged above have caused, and if not enjoined will continue to
27 cause irreparable and continuing harm to Facebook's marks, business, reputation, and goodwill.
28 Facebook has no adequate remedy at law as monetary damages are inadequate to compensate
Facebook for the injuries caused by Defendants.

95. As a result of Defendants' acts as alleged above, Facebook has incurred damages in an amount to be proven at trial.

96. Defendants' wrongful use of the FACEBOOK OF SEX mark is deliberate, willful, and without any extenuating circumstances, and constitutes a knowing use of Facebook's Marks and an exceptional case within the meaning of Lanham Act section 35, 15 U.S.C. § 1117. Facebook is therefore entitled to recover three times the amount of its actual damages, its attorneys' fees and costs incurred in this action, and prejudgment interest.

97. Defendants' acts alleged above are deliberate, willful, and in reckless disregard of Facebook's trademark rights, entitling Facebook to the recovery of punitive damages under California common law.

EIGHTH CAUSE OF ACTION
(VIOLATION OF THE ANTI-CYBERSQUATTING CONSUMER PROTECTION ACT,
15 U.S.C. § 1125)

98. Facebook incorporates by reference paragraphs 1 through 40, inclusive, as if fully set forth herein.

99. Facebook began using the distinctive and famous FACEBOOK Marks years prior to Defendants' acquisition of the facebookofsex.com domain name, and, on information and belief, before Doe Defendants' acquisition of the Face Book of Sex Affiliate Domains. By the time Defendants acquired the facebookofsex.com domain, or the Doe Defendant Affiliates acquired the Face Book of Sex Affiliate Domains, the FACEBOOK Marks were widely recognized as an indicator of source for Facebook's services, and were famous.

100. Facebook is informed and believes and based thereon alleges that Defendants and Doe Defendants acquired and subsequently made use of the facebookofsex.com domain and the Face Book of Sex Affiliate Domains to drive traffic to Defendants' sites.

101. The facebookofsex.com domain name and Face Book of Sex Affiliate Domains are confusingly similar and/or dilutive of the FACEBOOK Marks.

102. Facebook is informed and believes and thereon alleges that Defendants and Doe Defendants acquired and have used the facebookofsex.com domain name and Face Book of Sex Affiliate Domains, respectively, with a bad faith intent to profit from the FACEBOOK Marks.

103. Defendants' and Doe Defendants' acts alleged above have caused, and if not enjoined will continue to cause irreparable and continuing harm to Facebook's marks, business, reputation, and goodwill. Facebook has no adequate remedy at law as monetary damages are inadequate to compensate Facebook for the injuries caused by Defendants and Doe Defendants.

104. Facebook is entitled to cancellation of the facebookofsex.com domain name and Face Book of Sex Affiliate Domains, or transfer of the domains to Facebook, along with monetary compensation and statutory penalties pursuant to the Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d).

**NINTH CAUSE OF ACTION
(CONTRIBUTORY AND VICARIOUS VIOLATION OF THE
ANTI-CYBERSQUATTING CONSUMER PROTECTION ACT, 15 U.S.C. § 1125)
(AS TO NAMED DEFENDANTS ONLY)**

105. Facebook incorporates by reference paragraphs 1 through 40, inclusive, as if fully set forth herein.

106. Facebook is informed and believes and based thereon alleges that its use of the distinctive and famous FACEBOOK Marks began years prior to the Doe Defendants' acquisition of the Face Book of Sex Affiliate Domains. By the time Doe Defendants acquired the Face Book of Sex Affiliate Domains, the FACEBOOK Marks were widely recognized as an indicator of source for Facebook's services, and were famous.

107. Facebook is informed and believes and based thereon alleges that Defendants intentionally induced the Doe Defendants to acquire and make use of the Face Book of Sex Affiliate Domains to drive traffic to Defendants' sites.

108. The Face Book of Sex Affiliate Domains are confusingly similar to and/or dilutive of the FACEBOOK Marks.

109. Facebook is informed and believes and based thereon alleges that Defendants induced the Doe Defendants to acquire and use the Face Book of Sex Affiliate Domains with a bad faith intent to profit from the FACEBOOK Marks, and that Defendants know or have reason to know that their affiliates are engaged in acts that amount to cybersquatting in violation of 15 U.S.C. § 1125(d).

1 110. Defendants have benefitted financially from the affiliates' registration and use of
2 the Face Book of Sex Affiliate Domains which they induce or enable through Defendants'
3 affiliate program. Defendants have the right and ability to control the cybersquatting occurring
4 on their affiliate network.

5 111. Furthermore, Defendants are contributing to the ongoing use of the Face Book of
6 Sex Affiliate Domains, which Defendants know or have reason to know harms Facebook in
7 violation of federal law. Defendants nonetheless continue to provide services and consideration
8 to these infringing affiliates.

9 112. Defendants' acts alleged above have caused, and if not enjoined will continue to
10 cause irreparable and continuing harm to Facebook's marks, business, reputation, and goodwill.
11 Facebook has no adequate remedy at law as monetary damages are inadequate to compensate
12 Facebook for the injuries caused by Defendants.

13 113. Facebook is entitled to monetary compensation and statutory penalties arising
14 from Defendants' acts alleged above pursuant to the Anti-Cybersquatting Consumer Protection
15 Act, 15 U.S.C. § 1125(d).

16 **TENTH CAUSE OF ACTION**
17 **(UNFAIR COMPETITION UNDER CAL. BUS. & PROF. CODE §§ 17200, *ET SEQ*)**

18 114. Facebook incorporates by reference paragraphs 1 through 40, inclusive, as if fully
19 set forth herein.

20 115. By the acts described herein, Defendants and Doe Defendants have engaged in
21 unlawful and unfair business practices that have injured and will continue to injure Facebook in
22 its business and property, in violation of California Business and Professions Code §§ 17200, *et*
23 *seq.*

24 116. Defendants' and Doe Defendants' acts alleged above have caused, and if not
25 enjoined will continue to cause irreparable and continuing harm to Facebook's marks, business,
26 reputation, and goodwill. Facebook has no adequate remedy at law as monetary damages are
27 inadequate to compensate Facebook for the injuries caused by Defendants and Doe Defendants.

28 117. As a direct and proximate result of Defendants' conduct alleged herein,

1 Defendants have been unjustly enriched and should be ordered to disgorge any and all profits
2 earned as a result of such unlawful conduct.

3 **ELEVENTH CAUSE OF ACTION**
4 **(DECLARATORY RELIEF)**
5 **(AS TO DEFENDANT VARIOUS ONLY)**

6 **118.** Facebook incorporates by reference paragraphs 1 through 40, inclusive, as if fully
7 set forth herein.

8 **119.** As a result of the facts alleged above, an actual controversy now exists between
9 Facebook and Various relating to Facebook's right to use and current use of the descriptive words
10 "friend finder" to refer to its friend finder tool, for which Facebook desires a declaration of rights.

11 **120.** A declaratory judgment is necessary in that Various, by its pattern of conduct, has
12 asserted that Facebook's use of the words "friend finder" violates Various's rights in its purported
13 "FriendFinder" marks, notwithstanding Facebook's assertion that it is making descriptive fair use
14 of those words, such that Various has created a real and reasonable apprehension of liability on
15 the part of Facebook.

16 **121.** Facebook thus seeks to have the Court declare that Facebook is making descriptive
17 fair use of the words "friend finder," or in the alternative, that Various's "FriendFinder"
18 Registrations are subject to cancellation on the grounds that the terms registered therein are
19 descriptive and have not acquired secondary meaning in the marketplace.

20 **122.** The declaratory relief sought herein will settle the controversy between the parties,
21 allow Facebook to continue using the descriptive words "friend finder," and eliminate the current
22 uncertainty and threat of challenge associated with Various's assertions.

23 **PRAYER FOR RELIEF**

24 **WHEREFORE,** Facebook prays:

25 **A.** That this Court grant injunctive relief enjoining Defendants, Doe
26 Defendants, and all others acting in concert with and having knowledge thereof, from using the
27 FACE BOOK OF SEX mark and any similar trade name or mark or variant thereof as a trade
28 name, trademark, service mark, domain name, or for any other purpose;

1 B. That this Court order Defendants and Doe Defendants to account to
2 Facebook any and all revenues and profits that Defendants and Doe Defendants have derived
3 from the wrongful actions alleged herein and pay all damages which Facebook has sustained by
4 reason of the acts complained of herein, and that such damages be trebled;

5 C. That this Court award Facebook the costs of this action and its reasonable
6 attorneys' fees and expenses;

7 D. That this Court award Facebook punitive damages;

8 E. That this Court order the Registrar of the facebookofsex.com domain name
9 and Face Book of Sex Affiliate Domains to cancel or transfer the registrations to Facebook;

10 F. That this Court award Facebook statutory damages of \$100,000 for each of
11 the infringing domain names registered by Defendants or Doe Defendants;

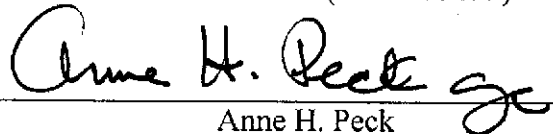
12 G. That this Court grant other equitable and additional relief to address the
13 proliferation of infringing domain names created through the Face Book of Sex affiliate network,
14 including but not limited to requiring Defendants to cease accepting traffic from or paying money
15 to any affiliate site using an infringing domain name or a Face Book of Sex banner ad;

16 H. That this Court declare Facebook's rights in connection with its use of the
17 words "friend finder," and specifically declare that Facebook is making descriptive fair use of the
18 words "friend finder," or in the alternative, direct the U.S. Patent & Trademark Office to cancel
19 Defendants' "FriendFinder" Registrations on the grounds that the terms registered therein are
20 descriptive and have not acquired secondary meaning in the marketplace.

21 I. That this Court grant such other and further relief as it should deem just.

22 Dated: April 13, 2011

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Dated: April 13, 2011

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